United Nations PCNICC/2000/L.4/Rev.1

Preparatory Commission for the International Criminal Court

Distr.: Limited
14 December 2000
English
Original: Arabic/English

New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000)

Contents

Page

Summary ... 2

Annexes

I. List of documents ... 4

II. A draft relationship agreement between the Court and the United Nations (see PCNICC/2000/L.4/Rev.1/Add.1) ... 12

III. Draft financial regulations and rules (see PCNICC/2000/L.4/Rev.1/Add.2) ... 12

IV. Draft agreement on the privileges and immunities of the Court (see PCNICC/2000/L.4/Rev.1/Add.3) ... 12

V. Crime of aggression ... 13

00-79576 (E) 050101

Summary

Rapporteur: Mr. Salah **Suheimat** (Jordan)

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, met at United Nations Headquarters from 27 November to 8 December 2000, in accordance with General Assembly resolution 54/105 of 9 December 1999.

2. In accordance with paragraph 2 of resolution F of the Conference, the Preparatory Commission consists of representatives of States which signed the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and other States which were invited to participate in the Conference.

3. Under paragraph 3 of General Assembly resolution 54/105, the Secretary-General was requested to convene the Preparatory Commission, in accordance with resolution F of the Conference, from 13 to 31 March, 12 to 30 June and 27 November to 8 December 2000, to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

4. In accordance with paragraph 5 of resolution 54/105, the Secretary-General invited, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions, to participate in the capacity of observers in its sessions and work, and also invited as observers to the Preparatory Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the international tribunals for the former Yugoslavia and for Rwanda.

5. Under paragraph 6 of the same resolution, non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure of the Commission, receiving copies of the official documents and making available their materials to delegates.

6. The Bureau of the Preparatory Commission, elected at its 1st and 2nd meetings, on 16 and 22 February 1999, continued its work, with the following composition:

Chairman:

Mr. Philippe Kirsch (Canada)

Vice-Chairmen:

Mr. George Winston McKenzie (Trinidad and Tobago)

Mr. Medard R. Rwelamira (South Africa)

Mr. Muhamed Sacirbey (Bosnia and Herzegovina)

Rapporteur:

Mr. Salah Suheimat (Jordan)

7. The Director of the Codification Division of the Office of Legal Affairs, Mr. Václav Mikulka, acted as Secretary of the Preparatory Commission. The Codification Division provided the substantive servicing for the Commission.

8. At its sixth session, the Preparatory Commission proceeded with its work on the basis of its agenda (PCNICC/1999/L.1), adopted on 16 February 1999.

9. In accordance with the decision taken at its 22nd meeting, on 28 June 2000, the Preparatory Commission agreed on a work plan for the sixth session providing for the consideration, in addition to the crime of aggression, of the following three new items in the three new Working Groups established at the same meeting as well as in informal consultations: the Relationship Agreement between the Court and the United Nations; the Financial Regulations and Rules of the Court; and the Agreement on the Privileges and Immunities of the Court.

10. In order to facilitate the tasks of the Preparatory Commission with regard to the above items, at its sixth session, at the 24th meeting, on 27 November 2000, the Chairman announced that Mr. Tuvako Manongi (United Republic of Tanzania) would continue as coordinator for the crime of aggression and, in consultation with the Bureau, designated the following coordinators for the new items:

- Mr. Cristian Maquieira (Chile) for the Relationship Agreement between the Court and the United Nations;
- Mr. Georg Witschel (Germany) for the Financial Regulations and Rules of the Court;
- Mr. Phakiso Mochochoco (Lesotho) for the Agreement on the Privileges and Immunities of the Court.

11. At its 26th meeting, on 8 December 2000, the Preparatory Commission took note of the oral reports of the coordinators for the four items considered at the sixth session.

12. At the same meeting, for ease of reference of delegations, the Commission requested the Secretariat to prepare a document on the basis of the oral reports of the coordinators and to annex it to the proceedings of the sixth session.

13. At the same meeting, on the recommendation of Mr. Witschel, the Coordinator of the Working Group on the Financial Regulations and Rules of the Court, the Preparatory Commission decided that that Working Group should also consider the following issues: composition, tasks and format of the committee on budget and finance of the Assembly of States Parties; rules dealing with drafting the budget of States Parties; establishment of trust funds and other funds as provided, for example, in article 79 of the Statute; and elaboration of criteria for receiving and utilizing voluntary contributions in accordance with article 116 of the Statute.

14. At its 25th meeting, on 1 December 2000, the Preparatory Commission, recalling the admission to membership in the United Nations of the Federal Republic of Yugoslavia in accordance with General Assembly resolution 55/12 of 1 November 2000, decided that the Federal Republic of Yugoslavia would participate in the Preparatory Commission.

15. In order to facilitate the tasks of the Preparatory Commission at future sessions, at the 25th meeting, on 1 December 2000, the Chairman, in consultation with the Bureau, designated the following contact points for the remaining items:

- Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran) for the Rules of Procedure of the Assembly of States Parties and for a budget for the first financial year;
- Mr. Zsolt Hetesy (Hungary) for the basic principles governing a Headquarters Agreement to be negotiated between the Court and the host country and for general issues.

16. At its 26th meeting, on 8 December 2000, the Preparatory Commission decided, in accordance with its mandate under resolution F of the Rome Conference, to consider at its seventh session, in addition to the four items considered at its sixth session, the Rules of Procedure of the Assembly of States Parties. At the same meeting, the Preparatory Commission also decided to establish a working group on the new item and designated, as its coordinator, Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran).

17. The list of documents relating to the four items considered at the sixth session is contained in annex I to the present document. The list of documents also includes the finalized draft texts of the Rules of Procedure and Evidence and the Elements of Crimes contained in the report of the Preparatory Commission (PCNICC/2000/1 and Add.1 and 2) adopted at its fifth session, at its 23rd meeting, on 30 June 2000, which incorporate the linguistic corrections submitted by delegations to the Secretariat by 15 October 2000, in accordance with the decision of the Preparatory Commission at its fifth session, at its 22nd meeting, on 28 June 2000.

18. The Preparatory Commission noted with satisfaction that, during its first to sixth sessions, a total of 90 delegates, including 17 delegates at its sixth session, had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105 of 8 December 1998, had been established to facilitate the participation of the least developed countries in the work of the Commission. The International Human Rights Law Institute of DePaul University provided accommodation for the delegates that attended the second and sixth sessions.

Annex I

List of documents*

[Original: English/French/Spanish/Arabic]

General documents

Symbol	*Description*
PCNICC/1999/INF/3	Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998 – Note by the Secretariat
PCNICC/2000/1	Report of the Preparatory Commission for the International Criminal Court
PCNICC/2000/1/Add.1	Report of the Preparatory Commission for the International Criminal Court – Addendum: Part I – Finalized draft text of the Rules of Procedure and Evidence
PCNICC/2000/1/Add.2	Report of the Preparatory Commission for the International Criminal Court – Addendum: Part II – Finalized draft text of the Elements of Crimes
PCNICC/2000/INF/4	Statements made in plenary in connection with the adoption of the report of the Working Group on the Rules of Procedure and Evidence and the report of the Working Group on Elements of Crimes

Sixth session of the Preparatory Commission (27 November–8 December 2000)

Symbol	*Description*
PCNICC/2000/L.4	Proceedings of the Preparatory Commission at its sixth session (27 November–8 December 2000) (draft summary)
PCNICC/2000/L.4/Rev.1	Proceedings of the Preparatory Commission at its sixth session (27 November–8 December 2000) (summary)
PCNICC/2000/L.4/Rev.1/Add.1	Annex II – A draft relationship agreement between the Court and the United Nations
PCNICC/2000/L.4/Rev.1/Add.2	Annex III – Draft financial regulations and rules
PCNICC/2000/L.4/Rev.1/Add.3	Annex IV – Draft agreement on the privileges and immunities of the Court
PCNICC/2000/DP.1	Proposal submitted by the United States of America – further issue for consideration by the Preparatory Commission
PCNICC/2000/INF/5	List of delegations

* General documents, documents issued at the sixth session of the Preparatory Commission and documents relating to the crime of aggression issued at the first to sixth sessions.

Working Group on a Relationship Agreement between the Court and the United Nations[1]

Sixth session of the Preparatory Commission (27 November–8 December 2000)

Symbol	*Description*
PCNICC/2000/WGICC-UN/L.1	Draft Relationship Agreement between the United Nations and the International Criminal Court – Prepared by the Secretariat
PCNICC/2000/WGICC-UN/DP.1	Proposal submitted by Argentina, Canada and the United Kingdom of Great Britain and Northern Ireland: Comments on document PCNICC/2000/WGICC-UN/L.1
PCNICC/2000/WGICC-UN/DP.2	Proposal by Belgium – Article 2, paragraph 3
PCNICC/2000/WGICC-UN/DP.3	Proposal submitted by Italy, France, the Philippines and Poland concerning document PCNICC/2000/WGICC-UN/L.1 – Article 2
PCNICC/2000/WGICC-UN/DP.4	Proposal submitted by Spain: Comments on document PCNICC/2000/WGICC-UN/L.1
PCNICC/2000/WGICC-UN/DP.5	Proposal submitted by Bolivia, Chile, Colombia, Costa Rica, Cuba, Ecuador, France, Guatemala, Mexico, Paraguay, Peru, Spain, the Syrian Arab Republic, Uruguay and Venezuela: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 21
PCNICC/2000/WGICC-UN/DP.6	Proposal submitted by France
PCNICC/2000/WGICC-UN/DP.7	Proposal submitted by Spain
PCNICC/2000/WGICC-UN/DP.8	Proposal submitted by Italy on document PCNICC/2000/WGICC-UN/L.1 – Article 9
PCNICC/2000/WGICC-UN/DP.9	Proposal submitted by Austria: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 6
PCNICC/2000/WGICC-UN/DP.10	Proposal submitted by the Russian Federation: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 14
PCNICC/2000/WGICC-UN/DP.11	Proposal submitted by Italy: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 14, paragraph 1
PCNICC/2000/WGICC-UN/DP.12	Proposal by the United States of America: Comments on document PCNICC/2000/WGICC-UN/L.1
PCNICC/2000/WGICC-UN/DP.13	Proposal submitted by Australia and the United States of America: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 14
PCNICC/2000/WGICC-UN/DP.14	Proposal submitted by Algeria, Iraq, Jordan, the Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates and Yemen: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 8
PCNICC/2000/WGICC-UN/DP.15	Proposal submitted by Venezuela: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 17

[1] No documents were issued under this heading during the first to fifth sessions of the Preparatory Commission.

Symbol	*Description*
PCNICC/2000/WGICC-UN/DP.16	Proposal submitted by Norway: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 8
PCNICC/2000/WGICC-UN/DP.17	Proposal submitted by the United States of America: Comments on document PCNICC/2000/WGICC-UN/L.1 – Proposal for a new article
PCNICC/2000/WGICC-UN/DP.18	Proposal submitted by Belgium concerning document PCNICC/2000/WGICC-UN/L.1 – Article 8
PCNICC/2000/WGICC-UN/DP.19	Proposal submitted by Cuba: Comments on document PCNICC/2000/WGICC-UN/L.1 – Article 16
PCNICC/2000/WGICC-UN/DP.20	Proposal submitted by Venezuela concerning document PCNICC/2000/WGICC-UN/L.1 – penultimate preambular paragraph
PCNICC/2000/WGICC-UN/RT.1	Discussion paper proposed by the Coordinator

Working Group on Financial Regulations and Rules[1]

Sixth session of the Preparatory Commission (27 November–8 December 2000)

Symbol	*Description*
PCNICC/2000/WGFIRR/L.1	Draft Financial Regulations of the International Criminal Court – Prepared by the Secretariat
PCNICC/2000/WGFIRR/DP.1	Proposal submitted by Germany concerning financial regulation 3.6 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.2	Proposal submitted by Germany concerning financial regulation 4 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.3	Proposal submitted by Germany concerning financial regulations 5.2 and 5.3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.4	Proposal submitted by Germany concerning financial regulations 6.2 and 6.6 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.5	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland concerning regulation 3.3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.6	Proposal submitted by the Republic of Korea concerning regulation 1.2(b) contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.7	Proposal submitted by the Republic of Korea concerning regulation 5.3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.8	Proposal submitted by the Republic of Korea on the allocation of financial roles among the Presidency, the Bureau of the Assembly of States Parties and the Assembly of States Parties concerning regulations 3.5, 4.5, 6.6, 9.1, 12.1, 12.5 and 12.8 contained in document PCNICC/2000/WGFIRR/L.1

Symbol	*Description*
PCNICC/2000/WGFIRR/DP.9	Proposal by Benin concerning regulations 3.2 and 11.2 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.10	Proposal by Benin concerning regulation 8 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.11	Proposal submitted by Germany concerning financial regulation 13 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.12	Proposal submitted by Malawi concerning regulations 5.1(c) and 7.2 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.13	Proposal submitted by Spain – Draft decision of the Preparatory Commission
PCNICC/2000/WGFIRR/DP.14	Proposal by Spain concerning regulation 3 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.15	Proposal by Spain concerning regulation 1 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.16	Proposal by Spain concerning regulation 12 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.17	Proposal by Spain concerning regulation 4 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.18	Proposal by Spain concerning regulation 7 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.19	Proposal by Spain concerning regulation 6 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.20	Proposal by Spain on the annex to the draft Financial Regulations concerning audit contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.21	Proposal by Spain concerning regulation 9 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.22	Proposal by Spain concerning regulation 5 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.23	Proposal by France concerning regulations 3 and 11 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.24	Proposal by France concerning regulation 5 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.25	Proposal by France concerning regulation 6 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1

Symbol	*Description*
PCNICC/2000/WGFIRR/DP.26	Proposal by France concerning regulation 12 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.27	Proposal submitted by Italy concerning regulation 1 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.28	Proposal submitted by Italy concerning regulation 3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.29	Proposal submitted by Italy concerning regulation 5 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.30	Proposal submitted by Italy concerning regulation 7 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.31	Proposal submitted by Italy concerning regulation 12 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.32	Proposal submitted by the United States of America concerning financial regulation 3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.33	Proposal submitted by France concerning regulation 6 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.34	Proposal submitted by Italy on regulation 7 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.35	Proposal submitted by Italy on regulation 6 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/RT.1	Text of the draft financial regulations of the International Criminal Court, with annotations – Preamble and draft regulations 1 to 10: draft discussion paper proposed by the Coordinator
PCNICC/2000/WGFIRR/RT.1/Rev.1	Text of the draft financial regulations of the International Criminal Court, with annotations – Discussion paper proposed by the Coordinator on the preamble and draft regulations 1 to 10

Working Group on an Agreement on the Privileges and Immunities of the Court

Sixth session of the Preparatory Commission (27 November–8 December 2000)

Symbol	*Description*
PCNICC/2000/WGAPIC/L.1	Draft agreement on the privileges and immunities of the International Criminal Court – Prepared by the Secretariat
PCNICC/2000/WGAPIC/DP.1	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 2 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1

Symbol	*Description*
PCNICC/2000/WGAPIC/DP.2	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 6 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.3	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 10 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.4	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on articles 14 and 15 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.5	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 14 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.6	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 15 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.7	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 16 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.8	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 20 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.9	Proposal submitted by Canada on article 13 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.10	Proposal submitted by Australia and the Syrian Arab Republic on article 6 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.11	Proposal submitted by Belgium, Germany and Switzerland for an article 12 bis in the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/RT.1	Draft Agreement on the Privileges and Immunities of the International Criminal Court – Discussion paper proposed by the Coordinator

The Crime of Aggression

General documents relating to the Crime of Aggression

First session of the Preparatory Commission (16-26 February 1999)

Symbol	*Description*
PCNICC/1999/DP.11	Proposal submitted by Bahrain, Iraq, Lebanon, the Libyan Arab Jamahiriya, Oman, the Sudan, the Syrian Arab Republic and Yemen on the crime of aggression

Second session of the Preparatory Commission (26 July-13 August 1999)

Symbol	*Description*
PCNICC/1999/DP.12	Proposal submitted by the Russian Federation: Definition of the crime of aggression
PCNICC/1999/DP.13	Proposal submitted by Germany: Definition of the crime of aggression
PCNICC/1999/INF/2	Compilation of proposals on the crime of aggression submitted at the Preparatory Committee on the Establishment of an International Criminal Court (1996-1998), the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (1998) and the Preparatory Commission for the International Criminal Court (1999)
PCNICC/1999/INF/2/Add.1	Addendum

Third session of the Preparatory Commission (29 November-17 December 1999)

Symbol	*Description*
PCNICC/1999/L.5/Rev.1	Proceedings of the Preparatory Commission at its first, second and third sessions (16-26 February, 26 July-13 August and 29 November-17 December 1999) (summary), annex IV

Fourth session of the Preparatory Commission (13-31 March 2000)

Symbol	*Description*
PCNICC/2000/L.1/Rev.1	Proceedings of the Preparatory Commission at its fourth session (13-31 March 2000) (summary), annex IV

Fifth session of the Preparatory Commission (12-30 June 2000)

Symbol	*Description*
PCNICC/2000/L.3/Rev.1	Proceedings of the Preparatory Commission at its fifth session (summary), annex II

Sixth session of the Preparatory Commission (27 November–8 December 2000)

Symbol	*Description*
PCNICC/2000/L.4/Rev.1	Proceedings of the Preparatory Commission at its sixth session (27 November–8 December 2000) (summary), annex V

Working Group on the Crime of Aggression[2]

Third session of the Preparatory Commission (29 November-17 December 1999)

Symbol	*Description*
PCNICC/1999/WGCA/DP.1	Proposal submitted by Greece and Portugal
PCNICC/1999/WGCA/RT.1	Discussion paper proposed by the Coordinator: Consolidated text of proposals on the crime of aggression
PCNICC/1999/WGCA/RT.1/Corr.1	Corrigendum
PCNICC/1999/WGCA/RT.1/Corr.2	Corrigendum (French only)

Fourth session of the Preparatory Commission (13-31 March 2000)

Symbol	*Description*
PCNICC/2000/WGCA/DP.1	Proposal submitted by Colombia on the definition of the crime of aggression and on conditions for the exercise of the jurisdiction of the Court with regard to this crime
PCNICC/2000/WGCA/DP.1/Add.1	Addendum
PCNICC/2000/WGCA/DP.2	Proposal submitted by Colombia on the Italian proposal made orally in the Working Group on 13 March 2000
PCNICC/2000/WGCA/DP.3	Suggestions made orally by Italy on 13 March 2000 with regard to a structure for discussion on the crime of aggression
PCNICC/2000/WGCA/RT.1	Discussion paper proposed by the Coordinator: Preliminary list of possible issues relating to the crime of aggression

Fifth session of the Preparatory Commission (12-30 June 2000)

Symbol	*Description*
PCNICC/2000/WGCA/INF/1	Reference document on the crime of aggression, prepared by the Secretariat

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/WGCA/DP.4	Proposal submitted by Germany: The crime of aggression - A further informal discussion paper
PCNICC/2000/WGCA/DP.5	Proposal submitted by Greece and Portugal

[2] No documents were issued under this heading during the first and second sessions of the Preparatory Commission.

Annex II

A draft relationship agreement between the Court and the United Nations

[*See PCNICC/2000/L.4/Rev.1/Add.1*]

Annex III

Draft financial regulations and rules

[*See PCNICC/2000/L.4/Rev.1/Add.2*]

Annex IV

Draft agreement on the privileges and immunities of the Court

[*See PCNICC/2000/L.4/Rev.1/Add.3*]

Annex V

Crime of aggression

[Original: English]

(Prepared on the basis of the discussion papers proposed by the Coordinator)[1]

Consolidated text of proposals on the crime of aggression

Definition of the crime of aggression

Option 1

1. For the purposes of the present Statute, [and subject to a determination by the Security Council regarding the act of a State,] the crime of aggression means [the use of the armed force, including the initiation thereof, by an individual who is in a position of exercising control or directing the political or military action of a State, against the sovereignty, territorial integrity or political independence of a State in violation of the Charter of the United Nations.] any of the following acts committed by [an individual] [a person] who is in a position of exercising control or capable of directing the political or military action of a State:

(a) initiating, or

(b) carrying out

Variation 1

[an armed attack] [the use of armed force] [a war of aggression] [a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing] against another State [against another State, or depriving other peoples of their rights to self-determination], in [manifest] contravention of the Charter of the United Nations, to violate [to threaten or to violate] the [sovereignty,] territorial integrity or political independence of that State [or the inalienable rights of those people] [except when this is required by the principle of equal rights and self-determination of peoples and the rights of individual or collective self-defence]

Variation 2

an armed attack directed by a State against the territorial integrity or political independence of another State when this armed attack was undertaken in manifest contravention of the Charter of the United Nations with the object or result of establishing a military occupation of, or annexing, the territory of such other State or part thereof by armed forces of the attacking State.

[1] The consolidated text of proposals on the crime of aggression was issued at the third session of the Preparatory Commission and the preliminary list of possible issues relating to the crime of aggression was issued at the fourth session.

Variation 3

Add the following paragraph to paragraph 1, variation 1, above:

2. Provided that the acts concerned or their consequences are of sufficient gravity, [acts constituting aggression include] [the use of the armed force includes] [are] the following [whether preceded by a declaration of war or not]:

(a) The invasion or attack by the armed forces of a State of a territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade [of the ports or coasts] of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed before, or its substantial involvement therein.

3. When an attack [the use of armed force] under paragraph 1 has been committed, the

(a) planning

(b) preparing, or

(c) ordering

thereof by an individual who is in a position of exercising control or capable of directing the political or military action of a State shall also constitute a crime of aggression.

Option 2

For the purposes of the present Statute and subject to a prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating or carrying out a war of aggression.

Conditions for the exercise of jurisdiction

Option 1

1. The Court shall exercise its jurisdiction with regard to the crime of aggression in accordance with the provisions of article 13 of the Statute.

2. The Security Council shall determine the existence of an act of aggression perpetrated by the State whose national is concerned in accordance with the relevant provisions of the Charter of the United Nations before proceedings take place in the Court with regard to the crime of aggression.

3. The Security Council, acting in accordance with article 13 (b) of the Statute of the International Criminal Court, shall first make a decision establishing that an act of aggression has been committed by the State whose national is concerned.

4. The Court, upon receipt of a complaint relating to the crime of aggression under article 13 (a) or (c), shall, with due regard to the provisions of Chapter VII of the Charter of the United Nations, first request the Security Council to determine whether or not an act of aggression has been committed by the State whose national is concerned.

5. The Security Council shall make a decision upon this request within [6] [12] months.

6. Notification of this decision shall be made by letter from the President of the Security Council to the President of the International Criminal Court without delay.

Variation 1

7. In the absence of a decision of the Security Council within the time frame referred to in paragraph 5 above, the Court may proceed.

8. The decision of the Security Council under paragraph 5 above shall not be interpreted as in any way affecting the independence of the Court in the exercise of its jurisdiction with regard to the crime of aggression.

Variation 2

7. Notwithstanding the provisions of paragraph 2 above, in the absence of a decision by the Security Council within the time frame referred to in paragraph 5 above, the Court shall, with due regard to the provisions of articles 12, 14 and 24 of the Charter, request the General Assembly of the United Nations to make a recommendation.

8. The General Assembly shall make such a recommendation within [12] months.

9. Notification of this recommendation shall be made by letter from the President of the General Assembly to the President of the International Criminal Court without delay.

10. In the absence of such a recommendation within the time frame referred to in paragraph 8 above, the Court may proceed.

11. The decision of the Security Council under paragraph 5 above or the recommendation of the General Assembly under paragraph 8 above shall not be

interpreted as in any way affecting the independence of the Court in the exercise of its jurisdiction with regard to the crime of aggression.

Option 2

1. The Court shall exercise its jurisdiction with regard to the crime of aggression subject to a determination by the Security Council in accordance with article 39 of the Charter, that an act of aggression has been committed by the State concerned.

2. When a complaint related to the crime of aggression has been lodged, the Court shall first seek to discover whether a determination has been made by the Security Council with regard to the alleged aggression by the State concerned and, if not, it will request, subject to the provisions of the Statute, the Security Council to proceed to such a determination.

3. If the Security Council does not make such a determination or does not make use of article 16 of the Statute within 12 months of the request, the Court shall proceed with the case in question.

Option 3[2]

For the purposes of the present Statute and subject to a prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating or carrying out a war of aggression.

Explanatory note

A. On the definition of the crime of aggression

(i) The previous text represents an attempt to consolidate, to the extent possible, the proposals already made on the question of definition of the crime of aggression for the purpose of the Rome Statute.

(ii) The text accepts two basic principles, which seem to enjoy widespread support: the principle under which the crime of aggression is committed by political or military leaders of a State; and the principle that the planning, preparation or ordering of aggression should be criminalized only when an act of aggression takes place.

(iii) Option 1 presents three variations after the first sentence in paragraph 1. These variations correspond to most of the various approaches that were suggested with regard to definition: general definition, definition based on the object or result of occupying or annexing the territory of the attacked State or part thereof, general definition plus detailed list of acts taken from General Assembly resolution 3314 (XXIX) of 14 December 1974.

(iv) Option 2 covers both the definition and the relationship with the Security Council, and is based, in its definitional part, on article 6 (a) of the Charter of the International Military Tribunal of Nuremberg.

[2] Option 3 is duplicated and appears also under the definition of the crime of aggression since it covers the two issues, namely, the definition of the crime and conditions for the exercise of jurisdiction.

(v) On some points, square brackets appeared to be inevitable to show the different formulas that were suggested. Where part of the text is added in square brackets, this is not intended to indicate lesser support for that part.

B. On the conditions for the exercise of jurisdiction

(i) The text is an attempt to consolidate all the proposals circulated so far on this issue, taking also into account views expressed by delegations from the floor.

(ii) Option 1 is an attempt to reflect views seeking to reconcile the prerogatives of the Security Council with the independence of the Court.

Hence, it is founded on the following considerations:

- Article 5 (2) of the Statute of the International Criminal Court stipulates that the definition of the *crime of aggression* and the conditions under which the Court shall exercise jurisdiction with respect to this crime shall be consistent with the relevant provisions of the Charter of the United Nations;
- As set out in article 39 of the Charter, the Security Council has the responsibility for establishing the existence of an *act of aggression*;
- The Court exercises its jurisdiction over persons on the *crime of aggression* (articles 1, 5 and 25 of the Statute);
- The *crime of aggression* presupposes the existence of an *act of aggression*;
- The trigger mechanism should therefore recognize the primary responsibility of the Security Council to establish the existence of an *act of aggression* in accordance with the relevant provisions of the Charter;
- Variation 2 is based on the assumption that if, for any reason, the Security Council cannot make a decision, the Charter itself provides for an internal mechanism to address the issue.

(iii) Option 3 embodies both the definition and the relationship between the Court and the Security Council, and is based in its conditional part on the proposal as contained in article 23 (2) of the International Law Commission draft statute for the International Criminal Court.

Preliminary list of possible issues relating to the crime of aggression

Discussion paper proposed by the Coordinator

A possible checklist of issues to be addressed in developing proposals for a provision on aggression in accordance with article 5, paragraph 2, of the Rome Statute and resolution F, paragraph 7, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

N.B. This preliminary list of possible issues is based on an initial review of the Rome Statute with a view to determining the provisions that may in some way be related to the definition of the crime of aggression. This non-exhaustive list is intended to facilitate a thematic discussion of possible issues most of which are closely interrelated.

I. Possible issues relating to the Rome Statute

- **Definition**

  (i) Whether the definition should be more general in nature referring to what may be the essential characteristics of the crime of aggression. (Possible instruments of reference: Charter of the United Nations; Nürnberg Charter; Draft Code of Crimes against the Peace and Security of Mankind; case law and other documents)

  (ii) Whether the definition should include a more specific list of acts which could constitute the crime of aggression.
  (Possible instrument of reference: General Assembly resolution 3314 (XXIX))

  (iii) Whether it would be possible to identify some acts listed in resolution 3314 (XXIX) and add them to the general definition of the crime of aggression.

- **Conditions under which the Court shall exercise jurisdiction**

  (i) What role should be played by the Security Council in relation to the jurisdiction of the Court over the crime of aggression?

  (ii) What action, if any, could be taken in the event that the Security Council fails or otherwise declines to determine that an act of aggression has occurred?

  (iii) What are the legal effects on the functions of the Court arising from a determination by the Security Council that an act of aggression was committed by a State?

- **Consistency with the relevant provisions of the Charter of the United Nations**

- **Complementarity and admissibility**

  How would the provisions of the Statute on complementarity (admissibility, challenges to the Court's jurisdiction) be applicable to the crime of aggression?

(This could include issues dealt with in preambular paragraphs 6 and 10, article 1, as well as articles 12 to 19 of the Rome Statute.)

- ***Ne bis in idem***

Applicability of exceptions to the crime of aggression (Rome Statute, art. 20 (3), only refers to crimes in arts. 6, 7 and 8).

- **General principles of criminal law**

Consider the relationship between the definition of the crime of aggression and the articles on general principles of criminal law:

(i) *Nullum crimen sine lege* (art. 22)

(ii) *Nulla poena sine lege* (art. 23)

(iii) Non-retroactivity *ratione personae* (art. 24)

(iv) Individual criminal responsibility (art. 25)

(v) Exclusion of jurisdiction over persons under eighteen (art. 26)

(vi) Irrelevance of official capacity (art. 27)

(vii) Responsibility of commanders and other superiors (art. 28)

(viii) Non-applicability of statute of limitations (art. 29)

(ix) Mental element (art. 30)

(x) Grounds for excluding criminal responsibility (art. 31)

(xi) Mistake of fact or mistake of law (art. 32)

(xii) Superior orders and prescription of law (art. 33)

- **Investigation and prosecution**

Consider the provisions concerning the investigation and prosecution of crimes with respect to the crime of aggression (e.g., initiation of an investigation (art. 53))

- **National security information**

Consider the provisions concerning the protection of national security information in relation to the crime of aggression (art. 57 (3) (c), art. 72, art. 93 (4) and art. 99 (5))

- **International cooperation and judicial assistance**

These provisions may require further consideration depending upon the applicability of the principle of complementarity to the crime of aggression.

The following parts of the Rome Statute do not appear to raise possible issues regarding the definition of the crime of aggression:

Part 4. Composition and Administration of the Court;

Part 7. Penalties (The penalties set forth in article 77 are applicable to all crimes referred to in article 5.);

Part 8. Appeal and Revision;

Part 10. Enforcement;

Part 11. Assembly of States Parties;

Part 12. Financing;

Part 13. Final Clauses (The provision on aggression is to be adopted in accordance with articles 121 and 123 pursuant to article 5 of the Rome Statute.).

II. Possible issues relating to the Elements of Crimes

- The elements of the crime of aggression are provided for in resolution F rather than article 9 of the Rome Statute.
- Consider the structure and general provisions of the elements of the other crimes prepared pursuant to article 9 of the Rome Statute to ensure consistency.

III. Possible issues relating to the Rules of Procedure and Evidence

- Review the final text of the Rules of Procedure and Evidence prepared by the Preparatory Commission to determine whether there are provisions that require consideration in relation to the definition of the crime of aggression.

IV. Other possible issues

- What are the legal effects on the ICC of a decision of the International Court of Justice concerning aggression?

United Nations PCNICC/2000/L.4/Rev.1/Add.1

Preparatory Commission for the International Criminal Court

Distr.: Limited
14 December 2000
English
Original: Arabic/English

New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000)

Addendum

Annex II

A draft relationship agreement between the Court and the United Nations

Discussion paper proposed by the Coordinator

Article 1[1]
Purpose of the Agreement

The present Agreement, which is entered into by the United Nations and the International Criminal Court ("the Court"), pursuant to the provisions of the Charter of the United Nations ("the Charter") and the Rome Statute of the International Criminal Court ("the Statute"), respectively, defines the terms on which the United Nations and the Court shall be brought into relationship.

Article 2
Principles

1. The United Nations recognizes the Court as an independent permanent judicial institution which, in accordance with articles 1 and 4 of the Statute, has international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

[1] The discussion paper does not include a text for the preamble. A revised text for the preamble will be provided at the next session of the Preparatory Commission.

00-79583 (E) 291200

2. The Court recognizes the responsibilities of the United Nations under the Charter, in particular in the fields of international peace and security, economic, social, cultural and humanitarian development, in promoting and encouraging respect for human rights and for fundamental freedoms and, in conformity with the principles of justice and international law, the peaceful settlement of international disputes.[2]

3. The United Nations and the Court respect each other's status and mandate.

Article 3
Obligation of cooperation and coordination

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

Article 4[3]
Cooperation between the Security Council of the United Nations and the Court

1. When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor of the Court ("the Prosecutor"), pursuant to article 13, paragraph (b), a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General of the United Nations ("the Secretary-General") shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council. Information provided by the Court to the Security Council in accordance with the Statute and the Rules of Procedure and Evidence shall be transmitted through the Secretary-General.[4]

2. When the Security Council adopts under Chapter VII of the Charter a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted by the Secretary-General to the President of the Court and the Prosecutor.

3. If the Court, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, decides to inform the Security Council of a failure of cooperation with its requests, or to refer a matter to the Security Council, as the case may be, the Registrar of the Court ("the Registrar") shall convey to the Security Council through the Secretary-General the decision of the Court together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court, through the Registrar, of action, if any, taken by it under the circumstances.

---

[2] Some delegations suggested the deletion of this paragraph.

[3] Some delegations questioned the appropriateness of articles 4 to 8 for this Agreement.

[4] The retention, content and the placement of the last sentence of this paragraph will be re-examined in the context of the text of article 10.

Article 5
Cooperation between the United Nations and the Prosecutor

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules and established practice,[5] the United Nations undertakes to cooperate with the Prosecutor and shall[6] enter with the Prosecutor into such arrangements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises, under article 54 of the Rome Statute, his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations in accordance with paragraph 3 (c) of that article.

2. Subject to the rules and established practice[7] of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional information as he or she may seek, in accordance with paragraph 2 of article 15 of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations should provide documents or information to the Prosecutor on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor, the United Nations, or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

Article 6[8] [9]
General provisions regarding cooperation between the United Nations and the Court

1. With due regard to its responsibilities and competence under the Charter and subject to its rules and established practice, the United Nations undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to paragraph 6 of article 87 of the Statute.

2. The United Nations, or its programmes, funds and offices concerned may enter into agreements or arrangements with the Court, particularly upon the request of the Court, upon the provision of other forms of cooperation and assistance to the Court in conformity with the provisions of the Charter and the Statute.

---

[5] Some delegations questioned the need for the retention of these words.
[6] Some delegations preferred to replace the word "shall" with the word "may".
[7] Some delegations questioned the need for the retention of these words.
[8] Some delegations questioned the appropriateness of articles 4 to 8 for this Agreement.
[9] Some delegations suggested placing this article after article 3.

3. In the event that disclosure of information or documents, or the provisions of other forms of cooperation would endanger the safety or security of former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations, the Court may order, particularly at the request of the United Nations, appropriate measures of protection.[10]

Article 7[11]
Cooperation between the United Nations and the Court in cases of exercise by the Court of its jurisdiction in respect of crimes committed against the personnel, operations and flag of the United Nations

If the Court exercises its jurisdiction in respect of crimes[12] committed against the personnel of the United Nations or which involve the improper use of the flag, insignia or uniform of the United Nations resulting in death or serious personal injury, the Court shall keep the United Nations regularly[13] informed about its proceedings in such cases.

Article 8[14]
...

Article 9
Reciprocal representation

1. The Court may attend and participate in the work of the General Assembly of the United Nations in the capacity of observer. The United Nations shall, subject to the rules and practice of the bodies concerned, invite the Court to attend meetings and conferences convened under the auspices of the United Nations, where observers are allowed, and whenever matters of interest to the Court are under discussion.

2. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court or the Prosecutor may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.

3. Subject to the applicable provisions of the Rules of Procedure and Evidence and the Rules of the Court, the United Nations shall be invited to attend public meetings of the Court and those public hearings of its Chambers that relate to cases of interest to the Organization.[15]

4. Subject to the rules governing its operation, the Assembly of States Parties shall invite the United Nations to send observers to its meetings whenever matters of interest to the Organization are under discussion.[16]

---

[10] Some delegations were of the view that this paragraph went beyond the scope of the Statute.
[11] Some delegations questioned the need for the retention of this article.
[12] Some delegations preferred to insert the word "war" before the word "crimes".
[13] Some delegations suggested the deletion of this word.
[14] The Working Group deferred consideration of this article until the next session of the Preparatory Commission.
[15] Some delegations questioned the need for this paragraph.
[16] Idem.

Article 10
Exchange of information

1. Without prejudice to other provisions of the present Agreement concerning submission of documents and information concerning particular cases before the Court, the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest. In particular:

(a) The Secretary-General of the United Nations shall:

(i) Transmit to the Court information on developments related to the Statute which are relevant to the work of the Court, including information on communications received by the Secretary-General in the capacity of depositary of the Statute or depositary of any other agreements which relate to the exercise by the Court of its jurisdiction;

(ii) Keep the Court informed regarding the implementation of paragraphs 1 and 2 of article 123 of the Statute related to the convening by the Secretary-General of Review Conferences;

(iii) In addition to the requirement provided in paragraph 7 of article 121 of the Statute, circulate to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency which are not parties to the Statute the text of any amendment adopted pursuant to article 121 of the Statute, and the text of communications to the Secretary-General relating to the acceptance of such an amendment;[17]

(b) The Registrar of the Court shall:

(i) Upon the request of the United Nations and in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation related to pleadings, oral proceedings, orders[18] and judgements;[19]

(ii) Furnish to the United Nations, with the concurrence of the Court and subject to its Statute and rules, any information relating to the work of the Court requested by the International Court of Justice in accordance with its Statute.

2. The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information related to matters of mutual interest. They shall strive to combine, where appropriate, their efforts to secure the greatest possible usefulness and utilization of such information.

---

[17] Some delegations questioned the need for this subparagraph.

[18] Some delegations suggested the deletion of this word.

[19] Some delegations suggested that it would be useful to include somewhere in this Agreement a provision dealing with the transmission of information to the United Nations by the Court regarding a request for surrender of any member of United Nations peacekeepers when the Court deems it appropriate.

Article 11
Protection of confidentiality

If the United Nations is requested by the Court to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental or international organization, the United Nations shall seek the consent of the originator to disclose that information or documentation. If the originator is a State Party to the Statute and the United Nations fails to obtain its consent to disclosure within a reasonable period of time, the United Nations shall inform the Court accordingly and the issue of disclosure shall be resolved between the State Party concerned and the Court in accordance with the Statute. If the originator is not a State Party to the Statute and refuses to consent to disclosure, the United Nations shall inform the Court that it is unable to provide the requested information or documentation because of a pre-existing obligation of confidentiality to the originator.

Article 12[20]
Reports to the United Nations

The Court may, if it deems it appropriate, submit on its activities reports to the United Nations through the Secretary-General.

* * *[21]

Article 13[22]
International Court of Justice

The United Nations and the Court agree that a recommendation for referral to the International Court of Justice under paragraph 2 of article 119 of the Statute which involves a request for an advisory opinion shall be submitted to the General Assembly of the United Nations, which shall decide upon the request in accordance with Article 96 of the Charter.

Article 14
Personnel arrangements

1. The United Nations and the Court agree to consult and cooperate as far as practicable regarding personnel standards, methods and arrangements.

2. The United Nations and the Court agree to:

(a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules;

(b) Cooperate in the interchange of personnel;

---

[20] Some delegations questioned the need for the retention of this article in view of article 10.

[21] Owing to lack of time, the Working Group did not have time to consider articles 13 to 21 in informal consultations. The Working Group, however, had a brief discussion on article 13 in informal consultations.

[22] Some delegations questioned the need for this article.

(c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services.

Article 15
Administrative cooperation

The United Nations and the Court shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They may also consult to explore the possibility of establishing common facilities or services in specific areas provided that there are cost savings for both institutions.

Article 16
Conference services and facilities

1. The United Nations agrees that, upon the request of the Court, the United Nations shall, subject to availability and to any arrangement on costs and expenses referred to in paragraph 2 of article 18 of the present Agreement, provide to the Court such facilities and services at United Nations Headquarters as may be required for the meetings of the Assembly of States Parties and of its Bureau, including translation and interpretation services, documentation and conference services.

2. The terms and conditions on which any such facilities or services of the United Nations may be provided to the Court will, where necessary, be the subject of supplementary arrangements concluded for this purpose.

Article 17[23] [24]
Laissez-passer

Without prejudice to the right of the Court to issue its own travel document, and in particular in the absence of any such travel document, the judges, the Prosecutor, the Registrar and other officials of the office of the Prosecutor and the Registry shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General of the United Nations and the Court, to use the laissez-passer of the United Nations as a valid travel document[25] where such use is recognized by States Parties to, and in accordance, with the Agreement on the Privileges and Immunities of the International Criminal Court, concluded pursuant to article 48 of the Statute, or other agreements defining the privileges and immunities of the Court.

Article 18
Budgetary and financial matters

1. The United Nations and the Court agree to make separate arrangements governing the conditions according to which funds may be allocated to the Court by a decision of the General Assembly of the United Nations pursuant to articles 115 and 116 of the Statute.

---

[23] Some delegations questioned whether this article was necessary. Some delegations also suggested that consideration of this article should be deferred pending the completion of the articles on the privileges and immunities of the Court.

[24] Some delegations suggested that this article should be simplified and shortened.

[25] A suggestion was made to end the article after this word.

2. The United Nations and the Court further agree that the costs and expenses resulting from the cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court.

3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

Article 19
Implementation of the present Agreement

The Secretary-General of the United Nations and the Court may, for the purpose of implementing the present Agreement, enter into such supplementary arrangements as may be found desirable in the light of the operating experience of the United Nations and the Court.

...[26]

Article 20[27]
Amendments

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment agreed upon shall enter into force on its approval by the General Assembly of the United Nations and by the Assembly of States Parties to the Statute in accordance with article 2 of the Statute, on the latter date of the said approvals.

Article 21[28]
Entry into force

The present Agreement shall enter into force on its approval by the General Assembly of the United Nations and by the Assembly of States Parties to the Statute in accordance with article 2 of the Statute, on the latter date of the said approvals.

In witness thereof the undersigned have signed the present Agreement.

Signed this _____ day of _____ at United Nations Headquarters in New York in two copies in all the official languages of the United Nations and the Court.

[26] Some delegations suggested the inclusion of an article for the settlement of disputes between the United Nations and the Court with regard to interpretation and implementation of this Agreement.

[27] Some delegations suggested the inclusion of a paragraph on the provisional application of this Agreement.

[28] Idem.

Appendix

Owing to lack of time, the Working Group deferred consideration of the following proposals to the next session:

Proposals for article 8

Proposal A

If the Court exercises its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and who, pursuant to the provisions of the Convention on the Privileges and Immunities of the United Nations or other agreements concluded by the Organization, enjoys such immunities as are necessary for the independent exercise of his or her work for the Organization, the United Nations undertakes to cooperate with the Court in such a case and shall waive the immunities of the person concerned in accordance with the provisions of the relevant instruments for the purpose of enabling the Court to exercise its jurisdiction.[a]

Proposal B

Paragraph 1 of this article shall be without prejudice to the relevant norms of international law, particularly article 6 of the Convention on the Prevention and Punishment of the Crime of Genocide and article 27 of the Statute, in respect of the crimes that come under the jurisdiction of the Court. (as paragraph 2 to article 8)[b]

Proposal C

If the Court, pursuant to the Rome Statute, exercises its jurisdiction over a natural person who is alleged to be criminally responsible for a crime or crimes within the jurisdiction of the Court and pursuant to the provisions of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, enjoys privileges and immunities in connection with his or her work for the Organization, the United Nations undertakes, for the purpose that the Court exercise its jurisdiction, to cooperate with the Court in such a case or cases and shall waive the privileges and immunities of the person or persons, upon the request of the Court.[c]

Proposals for additional articles

Article 12 (bis). Agenda item[d]

1. The United Nations may propose items for consideration by the Assembly of States Parties. In such cases, the Secretary-General shall notify the President of the Bureau of the Assembly accordingly, providing any relevant information. The President shall include the item in the provisional agenda of the following session of the Assembly or of its Bureau.

[a] PCNICC/2000/WGICC-UN/DP.16.
[b] PCNICC/2000/WGICC-UN/DP.18
[c] PCNICC/2000/WGICC-UN/DP.14.
[d] PCNICC/2000/WGICC-UN/DP.4.

2. The Court may propose items for consideration by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall submit the proposed item to the General Assembly or the Security Council, and also to any other United Nations body, as appropriate.

Article 18 (bis). Other agreements concluded by the Court[e]

1. Prior to the conclusion of an agreement with a specialized agency or other intergovernmental organization of the United Nations system, the Court shall inform the United Nations of the nature and scope of the agreement and shall subsequently notify the Organization of its conclusion of such agreement.

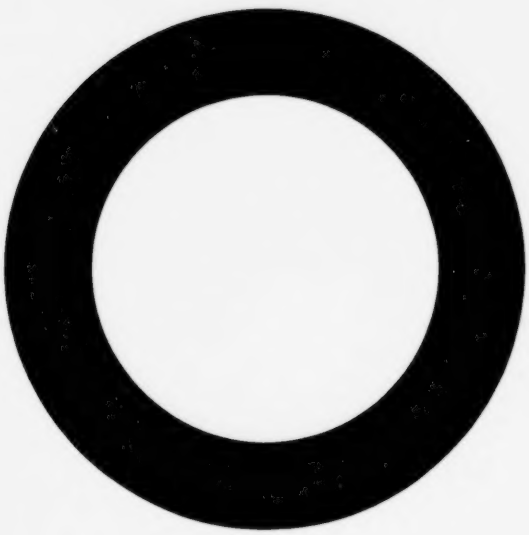
2. The United Nations and the Court shall consult, when necessary, on the registration by the United Nations of agreements concluded by the Court with States or international organizations.

Additional article

In order to encourage contributions by States to promote international peace and security, and unless there has been a referral to the Court pursuant to article 13 (b) of the Statute, the United Nations and the Court agree that the Court shall determine on its own motion pursuant to article 19 (1) the admissibility of a case in accordance with article 17 when there is a request for the surrender of a suspect who is charged in such case with a crime that occurred outside the territory of the suspect's State of nationality.[f]

---

[e] PCNICC/2000/WGICC-UN/DP.7.
[f] PCNICC/2000/WGICC-UN/DP.17.



United Nations PCNICC/2000/L.4/Rev.1/Add.2

Preparatory Commission for the International Criminal Court

Distr.: Limited
14 December 2000
English
Original: Arabic/English

New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000)

Addendum

Annex III

Draft financial regulations and rules

Discussion paper proposed by the Coordinator

Preamble and regulations 1 to 10

The Assembly of States Parties,

Noting that the Rome Statute of the International Criminal Court, article 113, provides that, except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by the Rome Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties,

Adopts the following Financial Regulations for the International Criminal Court.

Regulation 1
Applicability

1.1 These regulations shall govern the financial administration of the International Criminal Court.

00-79589 (E) 040101

1.2 For the purposes of these Regulations:

(a) "Assembly of States Parties" means the Assembly of States Parties to the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;

(b) "Committee on Budget and Finance" means the Committee established as such by the Assembly of States Parties;

(c) "Court" means the International Criminal Court;

(d) "Presidency" means the Presidency of the International Criminal Court;

(e) "Registrar" means the Registrar of the International Criminal Court;

(f) "Rome Statute" means the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;[1]

1.3 The Assembly of States Parties shall establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy.[2]

Regulation 2
The financial period

2.1 The financial period shall consist initially of one calendar year. The Assembly of States Parties shall keep under review the financial period.

Regulation 3
Programme and budget

3.1 The draft budget for each financial period shall be prepared by the Registrar in consultation with the other organs of the Court. The draft budget shall include funding for the expenses of the Assembly of States Parties, including its Bureau and subsidiary bodies.

3.2* The draft budget shall cover income and expenditures for the financial period to which they relate and shall be presented in United States dollars.

3.3 The draft budget shall be divided into parts, sections and, as appropriate, programme support. The budget narrative shall set out wherever possible concrete objectives, expected results and key performance indicators for the budget period. It shall be accompanied by such information, annexes and explanatory statements as may be requested by or on behalf of the Assembly of

---

* This provision will be the subject of further discussion in the Working Group.

[1] This provision merits further consideration in the light of the proposal contained in document PCNICC/2000/WGFIRR/DP.27.

[2] The corresponding provision in the United Nations Financial Regulations is included in regulation 10.1 (see para. (a) thereof), which sets forth functions of the Secretary-General, since the United Nations Financial Rules are promulgated by the Secretary-General. Pursuant to article 113 of the Rome Statute, the Financial Rules of the Court are to be adopted by the Assembly of States Parties. Thus, this provision is included in financial regulation 1 of the Court.

States Parties, including a statement on the main changes in comparison with the budget of the previous financial period and such further annexes or statements as the Registrar may deem necessary and useful. The Registrar shall monitor achievement of objectives and service delivery during the budget period and report in the context of the next proposed budget on actual performance attained.

3.4* The Registrar shall submit the draft budget for the following financial period to the Committee on Budget and Finance before the end of February of the year preceding the financial period for examination. The Committee on Budget and Finance shall transmit the draft budget proposed by the Registrar to the [Presidency],[3] with its comments and recommendations.[4]

3.5* The [Presidency] shall consider and approve the draft budget for the following financial period. The proposed budget as approved by the [Presidency] shall be submitted to the Assembly of States Parties for consideration and adoption.[5]

3.6 Supplementary budget proposals may be submitted by the Registrar with respect to the current financial period if circumstances unforeseen at the time of adopting the budget make it necessary. In this case, the supplementary budget proposal shall be in a form consistent with the approved budget. The provisions of these Regulations shall be applicable to the proposed

---

* This provision will be the subject of further discussion in the Working Group.

[3] In the United Nations Financial Regulations, the Secretary-General submits his proposed programme budget to the Advisory Committee on Administrative and Budgetary Questions (ACABQ). ACABQ examines and reports on the proposed budget to the General Assembly, which ultimately adopts the budget (see United Nations financial regulations 3.5 to 3.7). Under the Financial Regulations approved by the International Tribunal for the Law of the Sea, the Registrar submits the draft budget to the Committee on Budget and Finance, which transmits the draft budget to the "Tribunal", with its comments and recommendations. The "Tribunal" considers and approves the draft budget, which is then submitted to the Meeting of States Parties for adoption (see financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea). The present text of draft regulations 3.4 and 3.5 for the International Criminal Court follows the pattern of financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea. However, in the case of the International Criminal Court, the question arises as to where to allocate the functions that, in financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea, are allocated to the "Tribunal". In this connection, it may be noted that the International Tribunal for the Law of the Sea is composed of "a body of 21 independent members" (United Nations Convention on the Law of the Sea, annex VI, article 2(1)), and it is this "Tribunal" which performs the functions allocated to it in financial regulations 3.4 and 3.5. However, the International Criminal Court is composed of four organs: (a) the Presidency, (b) an Appeals Division, a Trial Division and a Pre-Trial Division, (c) the Office of the Prosecutor and (d) the Registry (Rome Statute, article 34). Thus, in the case of the International Criminal Court, it may be indefinite to allocate to the "Court" the functions which, in the case of the International Tribunal for the Law of the Sea, are allocated to the "Tribunal". It will have to be determined which organ of the Court should exercise these functions. One possibility is that the functions be exercised by the Presidency. Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on the question.

[4] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.18).

[5] See footnote 3 above. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

supplementary budget. Decisions of the Assembly of States Parties on the supplementary budget proposed by the Registrar shall be based on the recommendations of the Committee on Budget and Finance.

3.7* The Registrar may enter into commitments for future financial periods, provided that such commitments:

(a) Are for activities which have been approved by the Assembly of States Parties and are expected to continue beyond the end of the current financial period; or

(b) Are authorized by specific decisions of the [Presidency][6] acting with the prior approval of the Assembly of States Parties.

Regulation 4
Appropriations

4.1* The appropriations adopted by the Assembly of States Parties shall constitute an authorization for the Registrar to incur obligations and make payments for the purposes of which the appropriations were adopted and up to the amounts adopted.

4.2 Appropriations shall be available for obligation during the financial period to which they relate.

4.3 Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to liquidate any outstanding legal obligations of the financial period. The balance of the appropriations remaining unobligated at the close of the financial period, after deducting therefrom any contributions from States Parties relating to that financial year which remain unpaid, shall form part of any cash surplus of the budget and shall be treated in accordance with regulation 4.4 bis.

4.4 At the end of the twelve-month period provided in regulation 4.3, the then remaining unspent balance of appropriations retained after deducting therefrom any contributions from States Parties relating to the financial period of the appropriations which remain unpaid shall be treated as a cash surplus as in regulation 4.3. Any obligations remaining a valid claim at that time shall be charged against current appropriations.

The provisional cash surplus for the financial period shall be determined by establishing the balance between credits (assessed contributions actually

* This provision will be the subject of further discussion in the Working Group.

[6] The corresponding provision of the United Nations Financial Regulations, regulation 3.10 (b), authorizes the Secretary-General to enter into commitments for future financial periods provided that such commitments are authorized by specific decisions of the General Assembly. Financial regulation 3.7 (b) approved by the International Tribunal for the Law of the Sea authorizes the Registrar to enter into such commitments provided that they are authorized by specific decisions of the "Tribunal" acting with the prior approval of the Meeting of States Parties. For reasons discussed in footnote 3, above, in the case of the International Criminal Court, it may be indefinite for such authority to be given simply by the "Court", acting with the prior approval of the Assembly of States Parties. Thus, for the purposes of the present text, the word "Presidency" has been placed with square brackets, pending a decision on to whom the reporting should be made.

received for the financial period and miscellaneous income received during the financial period) and charges (all disbursements against the appropriations for that financial period and provisions for unliquidated obligations for that financial period).

The cash surplus for the financial period shall be determined by crediting to the provisional cash surplus any arrears of prior periods' assessed contributions from States Parties received during this period and any savings from the provisions made for unliquidated obligations as mentioned above. Any remaining outstanding obligations shall be re-obligated against the appropriations of the current financial period.

4.4 bis Any cash surplus in the budget at the close of any financial period shall be apportioned among States Parties in proportion to the scale of assessments applicable to the financial period to which the surplus relates. As of 1 January following the year in which the audit of the accounts of the financial period is completed, the amount so apportioned to a State Party shall be surrendered to such State Party if its contribution for that financial period has been paid in full and shall be applied to liquidate, in whole or in part, first, any advance due to the Working Capital Fund; secondly, any arrears of assessed contributions; and thirdly, assessed contributions for the calendar year following the year in which the audit is completed.

While any cash surplus in the budget shall be apportioned among all States Parties, the amount so apportioned shall be surrendered only to those States Parties which have paid in full their contributions for that financial period. Amounts apportioned but not surrendered shall be retained by the Registrar until such time as the contribution for the relevant financial period is paid in full, at which time they shall be applied as set forth above.

4.5* No transfer between appropriation sections may be made without authorization by the Assembly of States Parties. However, the [Presidency] may, in exceptional circumstances, authorize such a transfer and shall report thereon to the Assembly of States Parties.[7]

---

* This provision will be the subject of further discussion in the Working Group.

[7] A sentence analogous to the last sentence of regulation 4.5 does not appear in the corresponding provision of the United Nations Financial Regulations (regulation 4.5). It does appear in financial regulation 4.5 approved by the International Tribunal for the Law of the Sea. However, in that provision, the authority to authorize, in exceptional cases, a transfer between appropriation sections is allocated to the "Tribunal". For reasons discussed in footnote 3, above, in the case of the International Criminal Court, it may be indefinite for this authority to be allocated simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the authority should be allocated. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19). In addition, a proposal has been made to add a new regulation 4.6 to the Financial Regulation approved by the International Tribunal for the Law of the Sea (see SPLOS/CRP.19).

Regulation 5
Provision of funds

5.1* The funds of the Court shall include:[8]

(a) Assessed contributions made by States Parties in accordance with article 115, paragraph (a), of the Rome Statute;

(b) Funds provided by the United Nations in accordance with article 115, paragraph (b), of the Rome Statute;

(c) Voluntary contributions by Governments, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Such other funds to which the Court may become entitled or may receive.

5.2 The appropriations, subject to the adjustments effected in accordance with the provisions of regulation 5.3, shall be financed by contributions from States Parties in accordance with an agreed scale of assessment, as provided in article 117 of the Rome Statute. The scale shall be based on the United Nations regular budget scale of assessments adjusted to take into account the differences in membership between the United Nations and the Court. Pending the receipt of such contributions, the appropriations may be financed from the Working Capital Fund.[9]

5.3 The contributions of States Parties shall be assessed for a financial period on the basis of the appropriations approved by the Assembly of States Parties for that financial period. Adjustments to the assessments of States Parties shall be made in respect of:

(a) Any balance of the appropriations surrendered under regulation 4.4 bis;

(b) Contributions resulting from the assessment of new States Parties under the provisions of regulation 5.9.

5.4 After the Assembly of States Parties has reviewed and adopted the budget and determined the amount of the Working Capital Fund, the Registrar shall:[10]

(a) Transmit the relevant documents to the States Parties;

(b) Inform the States Parties of their commitments in respect of annual assessed contributions and advances to the Working Capital Fund;

(c) Request them to remit their contributions and advances.

---

* This provision will be the subject of further discussion in the Working Group.

[8] A provision of this nature does not appear in the United Nations Financial Regulations. It does appear in the Financial Regulations approved by the International Tribunal for the Law of the Sea. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.16).

[9] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of proposals for amendment (see SPLOS/CRP.15, SPLOS/CRP.16 and SPLOS/CRP.19).

[10] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

5.5 Assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.4 or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.[11]

5.6* Annual contributions and advances to the Working Capital Fund shall be assessed and paid in United States dollars.

5.7 Payments made by a State Party shall be credited first to the Working Capital Fund and then to the contributions due, in the order in which the State Party was assessed.

5.8 The Registrar shall submit to each meeting of the Assembly of States Parties a report on the collection of contributions and advances to the Working Capital Fund.

5.9 New States Parties shall be required to make contributions for the year in which they become States Parties and to provide their proportion of the total advances to the Working Capital Fund at rates to be determined by the Assembly of States Parties.[12]

5.10* Contributions of entities other than a State Party [or the United Nations] to the expenses of the Court shall be treated as miscellaneous income.[13]

Regulation 6[14]
Funds

6.1* There shall be established a General Fund for the purpose of accounting for the expenditures of the Court. The contributions referred to in regulation 5.1 by States Parties and miscellaneous income and any advances made from the Working Capital Fund to finance expenditures shall be credited to the General Fund.

---

* This provision will be the subject of further discussion in the Working Group.

[11] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[12] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[13] The corresponding provision of the United Nations Financial Regulations, regulation 5.9, differs, as it deals with situations particular to the United Nations. The words "or the United Nations" have been placed within square brackets pending consideration as to whether funds provided by the United Nations are to be treated as miscellaneous income. This provision should be consistent with regulation 7.1, below.

The United Nations Financial Regulations contain an additional regulation, regulation 5.10, which deals with borrowing for reimbursable seeding operations of the United Nations Habitat and Human Settlements Foundation. Such a provision presumably is not relevant to the International Criminal Court.

[14] With respect to draft regulations 6, 8, 9 and 11.3, it may be considered whether a relatively small secretariat would require as many funds and accounts as the United Nations itself. The use of interrelated subaccounts for banking and internal purposes might be considered.

6.2* There shall be established a Working Capital Fund in an amount and for purposes to be determined from time to time by the Assembly of States Parties. The Working Capital Fund shall be constituted by advances from States Parties. Advances shall be made in accordance with an agreed scale of assessment based upon the scale used for the regular budget. Advances shall be carried to the credit of States Parties which have made such advances.[15]

6.3 Advances made from the Working Capital Fund to finance budgetary appropriations shall be reimbursed to the Fund as soon as and to the extent that income is available for that purpose.

6.4* Except when such advances are recoverable from some other source, advances made from the Working Capital Fund for unforeseen and extraordinary expenses or other authorized purposes shall be reimbursed through the submission of supplementary budget proposals.[16]

6.5 Income derived from investments of the Working Capital Fund shall be credited to miscellaneous income.

6.6* Trust funds, reserve and special accounts may be established by the Registrar and shall be reported to the [Presidency].[17]

6.7* The purposes and limits of each trust fund, reserve and special account shall be clearly defined by the appropriate authority. Unless otherwise decided by the Assembly of States Parties, such funds and accounts shall be administered in accordance with these Regulations.[18]

---

* This provision will be the subject of further discussion in the Working Group.

[15] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of proposals for amendment (see SPLOS/CRP.15 and SPLOS/CRP.19).

[16] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[17] The corresponding provision of the United Nations Financial Regulations, regulation 6.6, provides that trust funds, reserve and special accounts established by the Secretary-General are to be reported to the Advisory Committee on Administrative and Budgetary Questions. Financial regulation 6.6 approved by the International Tribunal for the Law of the Sea provides that such accounts established by the Registrar are to be reported to the "Tribunal". For reasons discussed in footnote 3, above, in the case of the International Criminal Court, it may be indefinite for such reporting to be simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the reporting should be made. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[18] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

Regulation 7
Other income

7.1 All other income except:[19]

(a) Assessed contributions made by States Parties to the budget;

[(b)* Funds provided by the United Nations in accordance with article 115, paragraph (b), of the Rome Statute;][20]

(c)* Voluntary contributions made by States Parties, other States, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Direct refunds of expenditures made during the financial period;

(e)* Revenue derived from staff assessment,

shall be classed as miscellaneous income, for credit to the General Fund.

7.2* Voluntary contributions, gifts and donations, whether or not in cash, may be accepted by the Registrar, provided that the [Presidency][21] is satisfied that the purposes for which the contributions are made are consistent with the nature and functions of the Court. Acceptance of contributions which directly or indirectly involve additional financial liability for the Court shall require the consent of the Assembly of States Parties.[22]

7.3* Contributions accepted for purposes specified by the donors shall be treated as trust funds or special accounts.[23]

7.4* Contributions in respect of which no purpose is specified shall be treated as miscellaneous income and reported as "gifts" in the accounts of the financial period.

---

* This provision will be the subject of further discussion in the Working Group.

[19] This provision should be consistent with regulation 5.10 above. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[20] This provision has been placed within square brackets pending consideration as to whether funds provided by the United Nations are to be treated as miscellaneous income.

[21] The corresponding financial regulation approved by the International Tribunal for the Law of the Sea (regulation 7.2) provides that the "Tribunal" must be satisfied that the purposes for which contributions are made are consistent with the nature and functions of the Tribunal. For reasons discussed in footnote 3, above, in the case of the International Criminal Court, it may be indefinite for this function to be allocated simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the authority should be allocated.

[22] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[23] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

Regulation 8[24]
Custody of funds

8.1 The Registrar shall designate the bank or banks in which the funds of the Court shall be kept.

Regulation 9[25]
Investment of funds

9.1 The Registrar may make short-term investments of moneys not needed for immediate requirements and shall periodically inform the Presidency and, through the Committee on Budget and Finance, the Assembly of States Parties of such investments.[26]

9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each trust fund or special account.[27]

---

[24] See footnote 14.

[25] See footnote 14. In addition, it may be considered whether it would be appropriate and cost-effective for a relatively small secretariat to acquire the investment expertise needed in order for the Registrar to effectively make short-term investments. It might be preferable to provide that "moneys not needed to meet immediate requirements may be placed in higher interest yielding fixed-term bank accounts".

[26] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[27] The United Nations Financial Regulations contain the following additional provisions, which are not included in the Financial Regulations approved by the International Tribunal for the Law of the Sea and, therefore, have not been included in the present draft text:

> "9.2 The Secretary-General may, after consultation with the Investments Committee, make long-term investments of moneys standing to the credit of trust funds, reserve and special accounts, except as may be otherwise provided by the appropriate authority in respect of each such fund or account and having regard to the particular requirements as to the liquidity of funds in each case.
>
> "...
>
> "9.4 Under rules established by the Secretary-General, loans may be made from the resources of the United Nations Habitat for Human Settlements Foundation, including those borrowed pursuant to regulation 5.10, in implementation of the approved programmes of the Foundation."

Such a provision would presumably not be relevant in the case of the International Criminal Court.

The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

Regulation 10
Internal control

10.1 The Registrar shall:[28]

(a) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made;

(b) Designate the officers who may receive moneys, incur obligations and make payments on behalf of the Court;

(c) Maintain an internal financial control which shall provide for effective current examination and/or review of financial transactions in order to ensure:

(i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Court;

(ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Assembly of States Parties, or with the purposes and rules relating to trust funds and special accounts;

(iii) The economic use of the resources of the Court.

10.2 Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other appropriate authorizations have been made in writing under the authority of the Registrar.

10.3* The Registrar may make such ex gratia payments as he or she deems to be necessary in the interest of the Court, provided that the statement of such payments shall be submitted to the Assembly of States Parties with the accounts.

10.4* The Registrar may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the Auditor with the accounts and reported to the Assembly of States Parties.

---

* This provision will be the subject of further discussion in the Working Group.

[28] For reasons discussed in footnote 2, above, the substance of regulation 10.1 (a) approved by the International Tribunal for the Law of the Sea has, in the present draft text, been transposed to regulation 1.3.

Consideration might be given to specifying that the vouchers and other documents referred to in this regulation may be issued in electronic format.

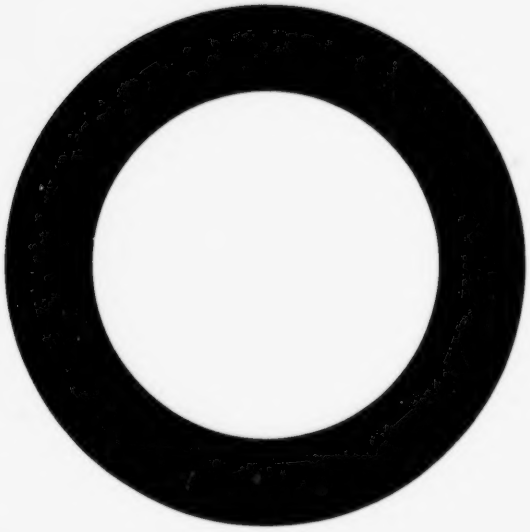
10.5* Substantial purchases of equipment, supplies and other requirements as specified in the Financial Rules shall be by tender. Such tenders shall be invited by advertisement, except where the Registrar, with the approval of the Presidency, deems that, in the interests of the Court, a departure from the rule is desirable.[29]

[The discussion of draft regulations 11, 12, 13 and 14 as well as the annex containing additional terms of reference governing the International Criminal Court will proceed on the basis of document PCNICC/2000/WGFIRR/L.1 and related proposals.]

---

* This provision will be the subject of further discussion in the Working Group.

[29] The corresponding provision of the United Nations Financial Regulations, regulation 10.5, does not restrict the requirement of tenders to "substantial purchases". That regulation provides: "Tenders for equipment, supplies and other requirements shall be invited by advertisement, except where the Secretary-General deems that, in the interests of the Organization, a departure from the rule is desirable". The wording of the draft provision in the present text reflects the wording of financial regulation 10.5 approved by the International Tribunal for the Law of the Sea.



United Nations PCNICC/2000/L.4/Rev.1/Add.3

Preparatory Commission for the International Criminal Court

Distr.: Limited
14 December 2000
English
Original: Arabic/English

New York
13-31 March 2000
12-30 June 2000
27 November-8 December 2000

Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000)

Addendum

Annex IV

Draft agreement on the privileges and immunities of the Court

Discussion paper proposed by the Coordinator

The States Parties to the present Agreement,

Whereas the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of the Plenipotentiaries establishes the International Criminal Court with the power to exercise its jurisdiction over persons for the most serious crimes of international concern;[1]

Whereas article 4 of the Rome Statute provides that the International Criminal Court shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes;[2]

Whereas article 48 of the Rome Statute provides that the International Criminal Court shall enjoy in the territory of each State Party to the Rome Statute such privileges and immunities as are necessary for the fulfilment of its purposes;[3]

Have agreed as follows:

[1] Rome Statute of the International Criminal Court, article 1.
[2] Ibid., article 4, para. 1.
[3] Ibid., article 48, para. 1.

00-79595 (E) 020101

Article 1[a]

Use of terms

For the purposes of the present Agreement:

(a) "the Statute" means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;

(b) "the Court" means the International Criminal Court established by the Statute;[4]

(c) "States Parties" means States Parties to the present Agreement;

(d) "Representatives of States Parties" means all delegates, deputy delegates, advisers, technical experts and secretaries of delegations;[5]

(e) "Assembly" means the Assembly of States Parties to the Statute;[6]

(f) "judges" means the judges of the Court;[7]

(g) "the Presidency" means the President and the First and Second Vice-Presidents of the Court;[8]

(h) "Prosecutor" means the Prosecutor elected by the Assembly of States Parties to the Statute in accordance with its article 42, paragraph 4;[9]

(i) "Deputy Prosecutors" means the Deputy Prosecutors elected by the Assembly of States Parties to the Statute in accordance with its article 42, paragraph 4;[10]

(j) "Registrar" means the Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;[11]

(k) "Deputy Registrar" means the Deputy Registrar elected by the Court in accordance with article 43, paragraph 4, of the Statute;[12]

(l) "officials of the Court" means the Deputy Registrar and the staff of the offices of the Prosecutor and the Registry;[13]

(m) "Secretary-General" means the Secretary-General of the United Nations;

---

[a] The Working Group agreed to keep the list of definitions open for other possible definitions.

[4] Ibid., article 1.

[5] Convention on the Privileges and Immunities of the United Nations (United Nations, *Treaty Series*, vol. 1, p. 15), article IV, para. 16.

[6] Rome Statute of the International Criminal Court, article 112, para. 1.

[7] Ibid., article 36, para. 1.

[8] Ibid., article 38, para. 1.

[9] Ibid., articles 15 and 42, paras. 2 and 4.

[10] Ibid., article 42, paras. 2 and 4.

[11] Ibid., article 43, paras. 2, 4 and 5.

[12] Ibid., article 43, paras. 3, 4 and 5.

[13] Ibid., article 44, para. 1; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, (SPLOS/25), article 1 (g); Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY Headquarters Agreement) (S/1994/848), article 1 (n).

(n) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

Article 2
Legal status and juridical personality of the Court

The Court shall have international legal personality and shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.[14] It shall possess juridical personality and, in particular, have the capacity:[15] to contract; to acquire and dispose of immovable and movable property; and to participate in legal proceedings.

Article 3
General provisions on privileges and immunities of the Court

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.[16]

Article 4[b]
Inviolability of the premises of the Court

The premises of the Court shall be inviolable.[17]

Article 5[c]
Flag, emblem and markings

The Court shall be entitled to display its flag, emblem and markings at its premises and on vehicles and other means of transportation used for official purposes.[18]

Article 6[d]
Immunity of the Court, its property, funds and assets

1. The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from every form of legal process, except insofar as in any particular case the Court has expressly waived its immunity. It is, however,

---

[14] Rome Statute of the International Criminal Court, article 4, para. 1.

[15] Convention on the Privileges and Immunities of the United Nations, article I; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 2; ICTY Headquarters Agreement, article III.

[16] Rome Statute of the International Criminal Court, article 48, para. 1.

[b] One delegation suggested that this article needed further consideration.

[17] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 3; ICTY Headquarters Agreement, article V, para. 1.

[c] It was agreed that this article should be moved.

[18] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 4; ICTY Headquarters Agreement, article XIII.

[d] One delegation proposed to grant also to Counsel the immunities on property, funds and assets provided to the Court in this article, in order to fulfil the requirement of equality of arms. Some delegations were of the view that the immunities in article 6 could not be extended to Counsel. This issue will be revisited in the context of article 16.

understood that such waiver of immunity shall not extend to any measure of execution.[19]

2. The property, funds and assets of the Court, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.[20]

3. To the extent necessary to carry out the functions of the Court, the property, funds and assets of the Court shall be exempt from restrictions, regulations, controls or moratoria of any nature.[21]

Article 7[c]
Inviolability of archives and all documents of the Court

The archives of the Court, and in general all documents and materials belonging to the Court, held by it, made available to the Court or used by it, wherever located and by whomsoever held, shall be inviolable.[22]

Article 8
Exemption from taxes, customs duties and import or export restrictions

1. The Court, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes, which include, inter alia, income tax, capital tax, corporation tax as well as direct taxes levied by local and provincial authorities. It is understood, however, that the Court shall not claim exemption from taxes which are, in fact, no more than charges for public utility services, provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.[23]

---

[19] Convention on the Privileges and Immunities of the United Nations, article II, section 2; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 5, para. 1; ICTY Headquarters Agreement, article VIII, para. 1.

[20] Convention on the Privileges and Immunities of the United Nations, article II, section 3; Agreement on the Privileges and Immunities of the International Tribunal for the Law of Sea, article 5, para. 2; ICTY Headquarters Agreement, article V, para. 1.

[21] Convention on the Privileges and Immunities of the United Nations, article II, section 5; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 5, para. 3; ICTY Headquarters Agreement, article VIII, para. 2.

[c] Following the discussion of article 7 in the Working Group and further discussions and informal consultations, some delegations worked on the possible reformulation of the article in the light of the observations made. As a result of the consultations, the following proposal was made:
The archives of the Court and in general all documents and materials being sent [to or] from the Court, belonging to the Court or held by it, wherever located and by whomsoever held, shall be inviolable. Such inviolability shall be without prejudice to protective measures that the Court may order pursuant to the Statute and the Rules of Procedure and Evidence with regard to documents and materials made available to or used by the Court.
This proposal was not discussed.

[22] Convention on the Privileges and Immunities of the United Nations, article II, section 4; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 6; ICTY Headquarters Agreement, article IX.

[23] Convention on the Privileges and Immunities of the United Nations, article II, section 7 (a); Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 9, para. 1; ICTY Headquarters Agreement, article X, paras. 1 and 4.

2. The Court shall be exempt from all customs duties, import turnover taxes and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Court for its official use and in respect of its publications.[24]

3. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the competent authorities of that State Party.[25]

Article 9
Reimbursement of duties and/or taxes

1. The Court shall not, as a general rule, claim exemption from duties and taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Court for its official use makes major purchases of property and goods or services on which identifiable duties and taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the exemption of such charges or reimbursement of the amount of duty and/or tax paid.[26]

2. Goods purchased under such an exemption or reimbursement shall not be sold or otherwise disposed of, except in accordance with the conditions laid down by the State Party which granted the exemption or reimbursement. No exemption or reimbursement shall be accorded in respect of charges for public utility services provided to the Court.[27]

Article 10
Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or financial moratoria of any kind, while carrying out its activities:[28]

(a) The Court may hold funds, currency of any kind or gold and operate accounts in any currency;

(b) The Court shall be free to transfer its funds, gold or its currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) The Court may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities;

---

[24] Convention on the Privileges and Immunities of the United Nations, article II, section 7 (b); Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 9, para. 2; ICTY Headquarters Agreement, article X, para. 2 (c).

[25] Convention on the Privileges and Immunities of the United Nations, article II, section 7 (b); Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, ICTY Headquarters Agreement, article X, para. 5.

[26] Convention on the Privileges and Immunities of the United Nations, article II, section 8; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 10, para. 1.

[27] Convention on the Privileges and Immunities of the United Nations, article II, section 7 (b); Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 10, para. 2; ICTY Headquarters Agreement, article X, para. 5.

[28] Convention on the Privileges and Immunities of the United Nations, article II, section 5; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 12, para. 1; ICTY Headquarters Agreement, article VIII, para. 2.

(d)

Alternative 1

The Court shall enjoy the same facilities in respect of rates of exchange for its financial transactions as are accorded to the most favourably treated foreign mission in that particular State Party.

Alternative 2

Delete subparagraph (d).

2. In exercising its rights under paragraph 1, the Court shall pay due regard to any representations made by any State Party insofar as it is considered that effect can be given to such representations without detriment to the interests of the Court.[29]

Article 11
Facilities in respect of communications

1. The Court shall enjoy in the territory of each State Party for the purposes of its official communications and correspondence treatment not less favourable than that accorded by the State Party concerned to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.[30]

2. No censorship shall be applied to the official communications or correspondence of the Court.[31]

3. The Court may use all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or cipher for its official communications and correspondence. The official communications and correspondence of the Court shall be inviolable.[32]

4. The Court shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.[33]

---

[29] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 12, para. 2.

[30] Convention on the Privileges and Immunities of the United Nations, article III, section 9; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 8, para. 1; ICTY Headquarters Agreement, article XI, para. 1.

[31] Convention on the Privileges and Immunities of the United Nations, article III, section 9; ICTY Headquarters Agreement, article XI, para. 2.

[32] Convention on the Privileges and Immunities of the United Nations, article III, section 10; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 8, para. 2; ICTY Headquarters Agreement, article XI, para. 2.

[33] Convention on the Privileges and Immunities of the United Nations, article III, section 10; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 8, para. 3.

5.[f] The Court shall have the right to operate radio and other telecommunications equipment on its registered frequencies and those allocated to it by the States Parties concerned.[34]

Article 12[g]
Exercise of the functions of the Court outside the headquarters

In the event that the Court pursuant to paragraph 3 of Article 3 of the Rome Statute considers it desirable to sit elsewhere than at its headquarters at The Hague in the Netherlands, the Court may conclude with the State concerned an arrangement concerning the provision of the appropriate facilities for the exercise of its functions.[35]

Article 12 (bis)[h]
Crimes under the jurisdiction of the Court

Article 13[i]
Privileges and immunities of the representatives of States Parties

1. Representatives of States Parties attending meetings of the Court and the Assembly and its subsidiary organs shall, while exercising their official functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:[36]

2. (a) Immunity from personal arrest or detention;

(b) Immunity from legal process of any kind in respect of words spoken or written, and all acts performed by them in their official capacity; such immunity

---

[f] It was considered by delegations that in order to continue the discussion on this paragraph, there was need to obtain the necessary information on the existing procedures regarding the registration and allocation of frequencies relevant for application to the Court.

[34] ICTY Headquarters Agreement, article XI, para. 3.

[g] While some delegations favoured the retention of article 12, other delegations questioned the need for it.

[35] Rome Statute of the International Criminal Court, article 3, paragraph 3; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 7.

[h] A proposal for article 12 bis:

"Articles 13 to 17 are without prejudice to the relevant rules of international law, including the Statute, relating to the crimes under the jurisdiction of the Court."

[i] Following the discussion of Article 13 in the Working Group and further discussions in informal consultations, some delegations worked on the possible reformulation of the article in the light of the observations made. As a result of the consultations, the following proposal was made: Change the title of article 13 to "Privileges and immunities of the representatives of States participating in the Assembly and its subsidiary organs"; in 13 (1), delete the words "Parties" and add the words "and intergovernmental organizations"; delete the words "the Court and"; after the words "and its subsidiary organs", insert the phrase "and representatives of other States that may be attending the Assembly as observers, in accordance with paragraph 1 of article 112 of the Statute,"; delete "Party" and "Parties" throughout the text; in 13 (2) delete the words "the Court and"; move article 13 (3) to article 19; add a new 13 (bis) with the title "Privileges and immunities of the representatives of States participating in the proceedings of the Court". New text would read: "Representatives of States participating in the proceedings of the Court shall, while exercising their official functions and during their journey to and from the place of the proceedings, enjoy the privileges and immunities referred to in article 13."
This proposal was not discussed.

[36] Convention on the Privileges and Immunities of the United Nations, article IV, section 11.

shall continue notwithstanding that the persons concerned may have ceased to exercise their functions as representatives of States Parties;

(c) Inviolability of all papers and documents;

(d) The right to use codes, to receive papers or correspondence by courier or in sealed bags, and to receive and send electronic communications;

(e) Exemption with respect to themselves, their spouses and other members of their families forming part of their household from immigration restrictions, alien registration requirements and national service obligations in the State Party they are visiting or through which they are passing in the exercise of their functions;

(f) The same privileges and facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(g) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys under the Vienna Convention;

(h) The same protection and repatriation facilities with respect to themselves, their spouses and other members of their families forming part of their household as are accorded to diplomatic agents in time of international crisis under the Vienna Convention;

(i) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise as part of their personal baggage) or from excise duties or sales taxes.

2. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of States Parties attending the meetings of the Court and the Assembly are present in a State Party for the discharge of their duties shall not be considered as periods of residence.[37]

3. Privileges and immunities are accorded to the representatives of States Parties not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the work of the Court and the Assembly. Consequently, a State Party not only has the right but is under a duty to waive the immunity of its representative in any case where, in the opinion of that State Party, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.[38]

4. The provisions of paragraphs 1 and 2 of this article are not applicable as between a representative and the authorities of the State Party of which he or she is a national or of which he or she has been a representative.[39]

---

[37] Convention on the Privileges and Immunities of the United Nations, article IV, section 13.

[38] Ibid., article IV, section 14.

[39] Ibid., article IV, section 15.

Article 14
Judges, Prosecutor, Deputy Prosecutors and Registrar

1.[j] The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to diplomatic agents under the Vienna Convention. After the expiry of their terms of office, they shall continue to be accorded immunity from legal process of every kind in respect of words which had been spoken or written and acts which had been performed by them in their official capacity.[40]

2. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Court is sitting. On journeys in connection with the exercise of their functions, they shall in all States Parties through which they may have to pass enjoy all the privileges, immunities and facilities granted by States Parties to diplomatic agents in similar circumstances under the Vienna Convention.[41]

3.[k] If a judge, the Prosecutor, the Deputy Prosecutor or the Registrar, for the purpose of holding themselves at the disposal of the Court, reside in any State Party other than that of which they are nationals or permanent residents, they shall, together with the members of their families forming part of their households, be accorded diplomatic privileges, immunities of diplomatic agents and facilities during the period of their residence.[42]

4. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar and members of their families forming part of their households in time of international crisis shall be accorded the same repatriation facilities as are accorded to diplomatic agents under the Vienna Convention.[43]

---

[j] The question was raised in the Working Group as to why paragraph 1 of article 14 would apply regardless of nationality, whereas in paragraph 3 a distinction between nationals and non-nationals was made.

[40] Rome Statute of the International Criminal Court, article 48, para. 2.

[41] Privileges and Immunities of Members of the International Court of Justice, the Registry, Assessors, and Agents and Counsel of the Parties and of Witnesses and Experts (General Assembly resolution 90 (I)), para. 3; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 13, para. 2; ICTY Headquarters Agreement, article XIV, para. 1.

[k] The question was raised in the Working Group as to why paragraph 1 of article 14 would apply regardless of nationality, whereas in paragraph 3 a distinction between nationals and non-nationals was made. A suggestion was made that a separate article on nationality should be included.

[42] Privileges and Immunities of Members of the International Court of Justice, the Registry, Assessors, and Agents and Counsel of the Parties and of Witnesses and Experts, para. 2; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 13, para. 3.

[43] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 13, para. 4.

5. Paragraphs 1 to 4 of this article shall apply to judges of the Court even after their term of office has expired if they continue to exercise their functions in accordance with article 36, paragraph 10, of the Statute.[44]

...[45]

7. The salaries, emoluments and allowances paid to the judges, the Prosecutor, the Deputy Prosecutors and the Registrar by the Court shall be exempt from taxation.[46] Where the incidence of any form of taxation depends upon residence, periods during which the judges, the Prosecutor, the Deputy Prosecutors and the Registrar are present in a State Party for the discharge of their functions shall not be considered as periods of residence for purposes of taxation.[47] States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources.[l]

8.[m] States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors and Registrars and their dependants.

Article 15
Officials of the Court

1. Officials of the Court shall enjoy in any State Party where they may be on the business of the Court, or in any State Party through which they may pass on such business, such privileges, immunities and facilities as are necessary for the independent performance of their functions.[48] They shall be accorded:[49]

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after termination of employment with the Court;

(c)[n] Inviolability for all official papers and documents of the Court;

---

[44] Ibid., article 13, para. 6.

[45] Paragraph 6 has been deleted.

[46] Convention on the Privileges and Immunities of the United Nations, article V, section 18 (b); Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 11, para. 1.

[47] Convention on the Privileges and Immunities of the United Nations, article IV, section 13; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 11, para. 2.

[l] The addition of the last sentence of paragraph 7 will be the subject of further discussion in the Working Group.

[m] This paragraph will be the subject of further discussion.

[48] Rome Statute of the International Criminal Court, article 48, para. 3; Privileges and Immunities of the International Court of Justice, the Registry, Assessors, and Agents and Counsel of the Parties and of Witnesses and Experts, para. 4 (a).

[49] Convention on the Privileges and Immunities of the United Nations, article V, section 18; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 14, para. 2; ICTY Headquarters Agreement, article XV, para. 1.

[n] Subparagraph (c) will be reconsidered in the light of the outcome of negotiations on article 7.

(d)[o] Exemption from taxation on the salaries, emoluments and allowances paid to them by the Court. States Parties may take these salaries, emoluments and allowances into account for the purpose of assessing the amount of taxes to be applied to income from other sources;

(e) Immunity from national service obligations;

(f) Together with members of their families forming part of their household, exemption from immigration restrictions or alien registration;

(g) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the official concerned;

(h) The same privileges in respect of exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the State Party concerned;

(i) Together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;

(j) The right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking post in the State Party in question and to re-export the same free of duty to their country of permanent residence.

2.[p] Personnel recruited by the Court locally and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Court. Such immunity shall continue to be accorded after termination of employment with the Court. They shall also be accorded such other facilities as may be necessary for their independent exercise of their functions for the Court.

3.[q] States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former officials and their dependants.

Article 16
Counsel

1.[r] Counsel before the Court and persons assisting such Counsel in accordance with rule 22 of the Rules of Procedure and Evidence shall be accorded such treatment as is necessary for the proper functioning of the Court[50] and shall be accorded upon production of the certificate referred to in paragraph 2 of this article, during the period of their missions, including the time spent on journeys in

[o] Subparagraph (d) will be the subject of further discussion in the Working Group.
[p] Paragraph 2 will be the subject of further discussion in the Working Group.
[q] Paragraph 3 will be the subject of further discussion in the Working Group.
[r] The issue of whether privileges and immunities should be extended to persons assisting Counsel will be the subject of further discussion. Views were expressed that this issue could be better dealt with in article 17 (1). Certain delegations expressed doubt as to the usefulness of such a reference.
[50] Rome Statute of the International Criminal Court, article 48, para. 4.

connection with their missions, the privileges, immunities and facilities necessary for the independent performance of their functions under the Statute.[51] They shall be accorded:[52]

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to exercise their functions;

(c) Inviolability of documents and papers relating to the exercise of their functions as counsel;

(d)[s] The right to receive and send papers or correspondence by courier or in sealed bags and to receive and send electronic communications;

(e)[t] Exemption from immigration restrictions or alien registration;

(f) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the counsel concerned;

(g) The same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) The same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

2.[u] Upon appointment in accordance with the Statute and the Regulations of the Court, a counsel shall be provided with a certificate indicating his or her status under the signature of the Registrar. A certificate provided to a counsel shall be limited to a period reasonably required for the proceedings.[53]

3. Where the incidence of any form of taxation depends upon residence, periods during which counsel are present in a State Party for the discharge of their functions shall not be considered as periods of residence.[54]

---

[51] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 16, para. 1; Privileges and Immunities of Members of the International Court of Justice, the Registry, Assessors, and Agents and Counsel of the Parties and of Witnesses and Experts, para. 5 (a) (i).

[52] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 15, para. 1; ICTY Headquarters Agreement, article XIX, para. 2.

[s] Some delegations suggested that an additional subparagraph should be included dealing with a guarantee of confidentiality between counsel, client and persons involved in the evidence.

[t] The general view was to maintain this subparagraph (e). One delegation expressed reservations to it.

[u] The formulation of the second sentence of paragraph 2 will be the subject of further consideration by the Working Group.

[53] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 16, para. 2.

[54] Ibid., article 16, para. 4.

Article 17[v]
Experts, witnesses, victims and other persons required to be present at the seat of the Court

1. Experts, witnesses, victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence, and other persons required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court[55] and shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities provided for in article 16, subparagraphs (a) to (f), of the present Agreement.[56]

2. Experts, witnesses and other persons required to be present at the seat of the Court shall be accorded repatriation facilities in time of international crisis.[57]

3. Experts, witnesses and other persons accorded the privileges, immunities and facilities referred to in paragraph 1 of this article shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary.

Article 18
Cooperation with the authorities of States Parties

1. The Court shall cooperate at all times with the appropriate authorities of States Parties to facilitate the execution of their laws and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in the present Agreement.[58]

2. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying privileges and immunities under the present Agreement to respect the laws and regulations of the State Party in whose territory they may be on the business of the Court or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that State.[59]

Article 19
Waiver

1. The privileges and immunities provided for in articles 14 to 17 of the present Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and the provisions of this article and there is a duty to do so in any particular case,

---

[v] The issue of experts whose services are required in the field and not necessarily at the seat of the Court should be the subject of further discussion in the context of article 17.

[55] Rome Statute of the International Criminal Court, article 48, para. 4.

[56] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 17, para. 1; Privileges and Immunities of Members of the International Court of Justice, the Registry, Assessors, and Agents and Counsel of the Parties and of Witnesses and Experts, para. 5 (a) (iii).

[57] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 17, para. 2.

[58] Article 25; ICTY Headquarters Agreement, article XXI, para. 2.

[59] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 19, para. 2; ICTY Headquarters Agreement, article XXI, para. 1.

where they can be waived without prejudice to the purpose for which they are accorded.[60]

2. The privileges and immunities may be waived:[61]

(a) In the case of a judge or the Prosecutor, by an absolute majority of the judges;

(b) In the case of the Registrar, by the Presidency of the Court;

(c) In the case of the Deputy Prosecutor and the staff of the Office of the Prosecutor, by the Prosecutor;

(d) In the case of the Deputy Registrar and the staff of the Registry, by the Registrar;

(e)* In the case of counsel, experts, witnesses or any other person required to be present at the seat of the Court, by the Court in accordance with its Regulations.[62]

Article 20
Notification

The Registrar shall communicate periodically to all States Parties the categories and names of persons to which the provisions of the present Agreement shall apply, in particular the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and officials of the Court, counsel, experts, witnesses and other persons required to be present at the seat of the Court. The Registrar shall also communicate to all States Parties information on any change in the status of these persons.[63] Notification regarding experts and witnesses shall be subject to any decisions taken by the Court regarding the protection of witnesses and experts.

---

[60] Privileges and Immunities of Members of the International Court of Justice, the Registry, Assessors, and Agents and Counsel of the Parties and of Witnesses and Experts, paras. 4 (b) and 5 (b); Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 20, para. 1; ICTY Headquarters Agreement, article XIV, para. 3, article XV, para. 5, article XVII, para. 2, article XIX, para. 4.

[61] Rome Statute of the International Criminal Court, article 48, para. 5.

* It was suggested in the Working Group that subparagraph (e) should provide for a hearing before waiver of immunities by the Court.

[62] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 20, para. 2; ICTY Headquarters Agreement, article XIX, para. 4.

[63] ICTY Headquarters Agreement, article XXII, para. 1; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 14, para. 4.

Article 21[3]
Laissez-passer

The States Parties shall recognize and accept the United Nations laissez-passer issued to the judges, the Prosecutor, the Deputy Prosecutors, the Registrar and officials of the Court as a valid travel document.[64]

Article 22
Visas

Applications for visas or entry/exit permits, where required, from all persons who are holders of the United Nations laissez-passer, and also from persons referred to in articles 16 and 17 of the present Agreement, who have a certificate or other document issued by the Court confirming that they are travelling on the business of the Court, shall be dealt with by the States Parties as speedily as possible and granted free of charge.[65]

[3] Further discussion of article 21 is dependent on the outcome of the consideration by the Working Group on the Relationship Agreement between ICC and the United Nations on the question whether laissez-passer documents will be issued to ICC personnel. In this context, it was suggested that whatever travel document would be issued by the Court to its personnel should also be issued to Counsel. This issue will require further consideration by the Working Group.

[64] Draft Relationship Agreement between the United Nations and the International Criminal Court (PCNICC/2000/ICC-UN/L.1) article 17; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 21, para. 1.

[65] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 21, para. 2; Privileges and Immunities of Members of the International Court of Justice, the Registry, Assessors, and Agents and Counsel of the Parties and of Witnesses and Experts, para. 6 (b).

Article 23[y]
Settlement of disputes

1. The Court shall make suitable provisions for the settlement of:[66]

(a) Disputes arising out of contracts and other disputes of a private law character to which the Court is a party;

---

[y] Following the discussion of article 23 in the Working Group, some delegations worked on a possible reformulation of the Article in light of the observations made in the course of the discussion. As a result of their consultations, which were preliminary in nature, the following reformulation of article 23 and a newly proposed article 23 (bis) were proposed:

"Article 23. Settlement of disputes with third parties

The Court, with the approval of the Assembly, shall make provisions for appropriate modes of settlement of:

(a) Disputes arising out of contracts and other disputes of a private law character to which the Court is a party;

(b) Disputes involving any person referred to in the present Agreement who, by reason of his or her official position or function in connection with the Court, enjoys immunity, if such immunity has been waived.

Article 23 (bis). Differences on the interpretation or application of the present Agreement

1. All differences arising out of the interpretation or application of the present Agreement between two or more States Parties or between the Court and a State Party shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 within [3] months following a written request by one of the parties to the difference, it shall at the request of either party be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 6.

3. The arbitral tribunal shall be composed of three members: one to be chosen by each party to the difference and the third, who shall be chairman of the tribunal, to be chosen by the other two members. If either party has failed to make its appointment of a member of the tribunal within [2] months of the appointment of a member by the other party, the President of the International Court of Justice shall make such an appointment at the request of such a party. Should the first two members fail to agree upon the appointment of the chairman of the tribunal within [3] months following their appointment, the chairman shall be chosen by the President of the International Court of Justice upon the request of either party to the difference.

4. Unless the parties to the difference otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the parties as assessed by the tribunal.

5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of this Agreement and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the parties to the difference.

6. The decision of the arbitral tribunal shall be communicated to the parties to the difference, to the Registrar and to the Secretary-General."

The above proposal was not discussed.

Another group of delegations made the proposal to amend the last paragraph of article 23 as follows:

"The arbitral tribunal shall reach its decision by a majority of votes on the basis of the rules indicated in article 38 of the Statute of the International Court of Justice. Its decision shall be final and binding on the parties to the dispute, even if rendered in default of one of the parties to the dispute."

The above proposal was also not discussed.

[66] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 26, para. 1, ICTY Headquarters Agreement, article XXVIII, para. 1.

(b) Disputes involving any person referred to in the present Agreement who, by reason of his or her official position, enjoys immunity, if such immunity has not been waived.

2. All disputes arising out of the interpretation or application of the present Agreement shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement. If a dispute arises between the Court and a State Party which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Court, one to be chosen by the State Party and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators. If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the President of the International Court of Justice shall make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the appointment of the first two arbitrators, the third arbitrator shall be chosen by the President of the International Court of Justice upon the request of the Court or the State Party. Unless the parties decide otherwise, the arbitral tribunal shall determine its own procedure. The expenses of the arbitral tribunal shall be borne by the parties to the dispute as assessed by the arbitral tribunal. The arbitral tribunal shall reach its decision by a majority of votes on the basis of the applicable rules of international law. In the absence of such rules, it shall decide *ex aequo et bono*. The decision of the arbitral tribunal shall be final and binding on the parties to the dispute, even if rendered in default of one of the parties to the dispute.[67]

Article 24
Signature, ratification, acceptance, approval or accession

1. The present Agreement shall be open for signature by all States until ... at the seat of the Court in The Hague and thereafter, until ... at United Nations Headquarters in New York.

2. The present Agreement is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. The present Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25
Entry into force[68]

1. The present Agreement shall enter into force thirty days after the date of deposit with the Secretary-General of the United Nations of the tenth instrument of ratification, acceptance, approval or accession.

---

[67] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 26, para. 2; ICTY Headquarters Agreement, article XXVIII, para. 2.

[68] Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, article 30.

2. For each State ratifying, accepting, approving or acceding to the present Agreement after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the Agreement shall enter into force on the thirtieth day following the deposit with the Secretary-General of the United Nations of its instrument of ratification, acceptance, approval or accession.

Article 26
Denunciation[69]

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce the present Agreement. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of the present Agreement.

Article 27
Depositary

The Secretary-General of the United Nations shall be depositary of the present Agreement.

Article 28
Authentic texts

The original of the present Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

---

[69] Ibid., article 33.